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course he can file a suit whenever he likes within a period of limitation, but I fix this limit, for withdrawal of security. I direct that after a year Nihal Chand and Jagannath may withdraw their security. If the suit has been filed before the year has expired it will be for Jai Ram Das to obtain the orders of the court for further security. It will of course be open to the trial court to pass such orders. I order that the papers be returned with these directions.

APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Wazir Hasan.

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October, 30.

THE LUCKNOW IMPROVEMENT TRUST (DEFENDANT-APPELLANT) *v.* P. L. JAITLY & Co. (PLAINTIFFS-RESPONDENTS.)*

United Provinces Town Improvement Act (VIII of 1919), section 97(1) and (3)—Improvement Trust entering into a contract with plaintiff to do certain work—Suit for money for work done under the contract—Limitation applicable to the suit, whether that prescribed by section 97(3) of United Provinces Improvement Act, 1919, or by the general law—Evidence Act (I of 1872), section 23—Letters marked "without prejudice," admissibility of, in evidence—Contract reduced to writing—Terms of a contract, ascertainment of—Correspondence preceding contract, if to be looked into to ascertain the terms of the contract.

Where the plaintiffs brought a suit for the recovery of the money due to them for doing the work of electric installation and fittings in a building of an Improvement Trust which they did under an agreement entered into between them and the Trust *held*, that it cannot be said that the entering into the agreement which constitutes the main

*Second Civil Appeal No. 209 of 1929, against the decree of Pandit Tika Ram Misra, Subordinate Judge, Mohanlal Ganj, Lucknow, dated the 28th of February, 1929, reversing the decree of Kunwar Pratap Vikram Shah, 2nd Munsif, Lucknow, dated the 24th of February, 1928, allowing the plaintiff's claim.

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element of the plaintiffs' cause of action was an act which was "done under the U. P. Town Improvement Act, 1919" within the meaning of section 97(1) of that Act and so the suit was governed by the general law of limitation and the period of limitation prescribed by section 97, sub-section (3) of that Act did not apply.

Where letters marked "without prejudice" are tendered in evidence in the ordinary course by one party and the other party admits them, the admission clearly implies that the privilege, if any, is withdrawn and the letters are free to be used as evidence in a judicial proceeding. Letters so marked at the best show the writer's desire as to the privilege to be attached to them but unless there are circumstances from which it can be inferred either by implication or otherwise that the other party also agreed to respect the privilege the provisions of section 23 of the Indian Evidence Act cannot apply and those letters cannot be excluded from the category of relevant evidence.

Where parties have entered into a contract for the formal terms of the contract between the parties the final and the last agreement should be looked into and not the correspondence which preceded it. *Bomanji Ardesnir Waida* v. *Secretary of State for India in Council* (1), relied on.

Shore v. *Wilson* (2), *Smith* v. *Doe d. Jersey* (3), *Prison Commissioners* v. *Clerk of the Peace for Middlesex* (4) and *Lee v. Alexander* (5), referred to.

Mr. *Shankar Sahai*, for the appellant.

Mr. *J. K. Tandon*, for the respondents.

STUART, C. J. and HASAN, J.—This is the defendant's appeal from the decree of the Subordinate Judge of Mohanlalganj dated the 28th of February, 1929, reversing the decree of the Second Munsif, Lucknow, dated the 24th of February, 1928.

The case of the plaintiffs, P. L. Jaitly & Co., is that under an agreement entered into between them and the defendant, the Lucknow Improvement Trust, in March, 1924 they carried out the work of

(1) (1928) L. R., 56 I. A., 51. (2) (1842) 9 Cl. & F., 355, 555.
(3) (1821) 2 Brod & B. 472. (4) (1882) 9 Q. B. D., 506(511).
(5) (1888) 8 A. C., 853, 868.

electrical installation and fittings at a building called the Prince of Wales Theatre situate in Hazratganj, Lucknow, which building belongs to the defendant. A decree for a sum of Rs. 825 was prayed for for the work done under the agreement mentioned above. To this claim of the plaintiffs a large number of pleas in defence were raised.

Stuart, C.J. and Hasan, J.

The Court of first instance rejected almost every plea of the defendant on the merits but accepted the defence as to the bar of limitation and consequently dismissed the suit. The plaintiffs preferred an appeal to the Court of the Subordinate Judge mentioned above. The learned Subordinate Judge considered the whole case in a well-reasoned judgment, accepted the appeal, reversed the decree of the court of first instance and granted a decree to the plaintiffs for a sum of Rs. 510 with proportionate costs, as already stated. The Lucknow Improvement Trust has now preferred this second appeal against the decision of the learned Subordinate Judge.

In support of the appeal three points were urged.

(1) That the suit is barred by limitation.

(2) That there is no admissible evidence on the record to support the finding of the lower appellate court that the Trust had agreed to give Rs. 147 to the plaintiffs as compensation for their work at the plaintiffs' building.

(3) That the plaintiffs were not entitled on the terms of the contract between the parties to the return of the security money which they had deposited with the defendant in relation to contract of the work to be done by them.

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As regards the plea of limitation, reliance is placed upon the provisions of section 97 of the U. P. Town Improvement Act, 1919, and it is argued that the provisions of that section prescribe a limitation of six months for suits of the nature of the present suit. Sub-section (3) of section 97 mentioned above is as follows:—"No action such as is described in sub-section (1) shall, unless, it is an action for the recovery of immoveable property or for a declaration of title thereto, be commenced otherwise than within six months next after the accrual of the cause of action." There is no question in this case that the cause of action accrued when the plaintiffs finished the work with which they were entrusted under the agreement and this happened on the 15th of August, 1924. If therefore sub-section (3) quoted above applies to this case the plaintiffs' suit is clearly barred by time, but with a view to determine whether the said sub-section does apply or not we must look to the provisions of sub-section (1) of section 97 because sub-section (3) prescribes the limitation of six months only for such suits as are described in sub-section (1). The relevant portion of sub-section (1), may be rendered as follows:—"No suit shall be instituted against the Trust . . . in respect of an act purporting to be done under this Act." The question for decision therefore is as to whether the agreement entered into by the Lucknow Improvement Trust and on which the present suit is founded was an act purporting to be done under the Town Improvement Act. Clearly it would be such an act if we could discover any provision in the Act authorising the Trust to enter into contracts in their character as such and of the nature of the present contract. The learned Counsel on both sides and we have endeavoured in vain to find any such provision within the four corners of this Act. Whether the omission

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is deliberate or accidental is a matter with which we as a court of law are not concerned. The result is that it cannot be held that the entering into the agreement which constitutes the main element of the plaintiffs' cause of action was an act which was "done under this Act." This being so, the general law of limitation applies and it is agreed that the suit is in time within that law.

As to the second point addressed to us in support of this appeal, little need be said. The argument is that the lower appellate court has accepted in evidence in support of its finding mentioned above two letters which the defendants had addressed to the plaintiffs. It is agreed that if these letters were rightly accepted in evidence the admission contained therein justifies the finding. It is contended that these letters were not admissible in evidence for the reason that they bore the inscription "without prejudice" in both cases. We agree with the learned Subordinate Judge that the privilege if it was ever intended to be annexed to these letters was waived in the course of the proceedings before the trial court. These letters were in the ordinary course tendered by the plaintiffs in evidence. The defendant's Counsel admitted them. This admission on the part of the Counsel clearly implies that the privilege was withdrawn and the letters were free to be used as evidence in a judicial proceeding. Further we are of opinion that the provisions of section 23 of the Indian Evidence Act, 1872, under which the privilege is claimed, do not cover the case before us. Those provisions exclude from the category of relevant evidence such admissions as are made "either upon an express condition that evidence of it is not to be given or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be

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given.' At the best the defendant has succeeded only in showing its own desire as to the privilege to be attached to these letters but we are unable to discover either by implication or otherwise any circumstance from which we can infer that the plaintiffs also agreed to respect the privilege. We, therefore, overrule the second point also.

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The third point is that though it is true that the final agreement entered into between the parties laid an obligation on the plaintiffs to do service in relation to the work which they had done in the defendant's building for a period of six months but it is contended that having regard to a letter of the plaintiffs preceding the agreement in which they had agreed to render service for a period of twelve months but they did not do so the security money deposited by them is liable to be forfeited under the terms of the agreement. The view which the learned Subordinate Judge has taken in this behalf is that for the final terms of the contract between the parties the formal and the last agreement should be looked into and not the correspondence which preceded it. This view we are of opinion is perfectly sound both in common sense and in law. To quote the language of Viscount DUNEDIN in a recent judgment of their Lordships of the Judicial Committee in the case of *Bomanji Ardeshir Waida* v. *Secretary of State for India in Council* (1), "Nothing is better settled than that when parties have entered into a formal contract that contract must be construed according to its own terms and not to be explained or interpreted by "the antecedent communings which led up to it. This is especially true of a conveyance. There even, if there has been a formal antecedent contract, that contract cannot be looked at to control the terms of the conveyance; much less can

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mere communings, which could only show what parties meant to do but cannot show what they did. It would be *otiose* to set forth at length the authorities, but reference may be made to the dictum of Baron Parke in *Shore* v. *Wilson* (1); *Smith* v. *Doe d. Jersey* (2); *Prison Commissioners* v. *Clerk of the Peace for Middlesex* (3), per Sir G. JESSEL and *Lee* v. *Alexander* (4) in which . . . Lord SELBORNE states the proposition as a general one." We therefore, reject the third point also.

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The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Bisheshwar Nath Srivastava.

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November, 4.

THAKUR MATA BAKHSH SINGH AND ANOTHER (DEFENDANTS-APPELLANTS) *v.* MUSAMMAT THAKURAIN PATRAJ KUNWAR, PLAINTIFF, AND OTHERS (DEFENDANTS-RESPONDENTS.)*

Guardian and minor—Guardian raising loan on security of infant's estate by order of court—Sanction of court both for principal and rate of interest—Minor, whether can challenge the mortgage.

Where the guardian of a minor obtained an order of the District Judge authorizing him to raise a loan on the security of the infant's estate and he did so, the lender of the money is entitled to trust to that order and he is not bound to inquire as to the expediency or necessity of the loan for the benefit of the infants estate unless fraud or underhand dealings are brought home to him and the District Judge

*First Civil Appeal No. 15 of 1929, against the decree of Babu Gauri Shankar Varma, Additional Subordinate Judge of Bahraich, dated the 19th of October, 1928, decreeing the plaintiff's claim.

(1) (1842) 9 Cl. & F. 355, 555. (2) (1821) 2 Brod. & B. 473.

(3) (1882) 9 Q. B. D., 506(511). (4) (1888) 8 App. Cas. 853, 868.